IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Revision No. 500 of 2000

Date of decision: 22.11.2006

Rani

..... Petitioner.

Versus

Kaushalya Devi & others

..... Respondents.

CORAM: HON'BLE MR. JUSTICE P.S. PATWALIA

Present:- Mr. B.R. Mahajan, Advocate
for the petitioner.

Mr. Rajinder Sharma,Advocate
for respondent no.2.

P.S. PATWALIA, J. (ORAL)

The present revision petition has been filed by the landlady against concurrent findings recorded by the Rent Controller as also the Appellate Authority dismissing a petition filed by her under Section 13 of the East Punjab Rent Restriction Act, 1949 seeking the ejectment of the respondents-tenants from the demised premises as also a first appeal filed by her.

It is the case of the landlady that the demised premises which has now been converted into a house and shop by two tenants was

previously owned by her mother Smt. Daropti Devi wd/o Harnam Singh. Her mother executed a Will dated 09.02.1992 in her favour and thus now she is owner of the demised premises. It is her case that initially the house had been let out only to respondent No.1 Sant Ram at the rate of Rs.20/- per month. The house had three storeys. Respondent no.1 subsequently sub let the ground floor to respondent no.2 by converting the same into a shop. It was further her contention that the respondent had demolished one storey without the consent of the applicant. She had claimed the eviction of the respondents from the said premises on the grounds of non payment of rent, that the respondent had diminished the utility of the house by demolishing the portion of the same, that the property has become unsafe and unfit for human habitation; that respondent no.1 had sublet the shop to respondent no.2 and also that the demised premises are required for the purpose of bonafide personal necessity of the landlady to enable her to live within the Municipal Corporation Amritsar. The Rent Controller did not find any merit in any of the grounds set up by the landlady. In the first appeal filed by her she only pressed the ground of bonafide personal necessity. However she failed even on that ground in the first appeal.

Hence she has filed the present revision petition where again she has only pressed the ground of bonafide personal necessity.

It is the case of the landlady that she is serving in the office of Municipal Corporation at Amritsar. She is however residing at Raja Sansi. She has therefore to come everyday in the morning to attend to her duty and go back in the evening. She has thus to cover a distance of about 18 K.M. one way. She further contended that she required the demised premises for

her own use and occupation as she wishes to settle in the same . As a result she could conveniently attend to her job without having to commute such a long distance. On the other hand learned counsel for respondent no.2 contended that the applicant has a matrimonial dispute with her husband. She is not living with him. It is therefore that she is living in Raja Sansi where her brothers also reside. It is therefore their case that she is well settled at Raja Sansi living in the security of her brothers and the plea of the bonafide personal necessity is only a pretext to evict the respondents from the demised premises.

The plea of bonafide personal necessity was declined by the Rent Controller with the following observations:-

> "... I have carefully considered the contentions advanced by the learned counsel for the parties in the light of evidence on record. So far as this ground is concerned, we have a bare statement of AW-5 Smt. Rani applicant. She stated that the demised premises is required for her personal residence as she has no other house within the Municipal Limits of M.C. Amritsar. She further stated that she daily comes from Raja Sansi to Amritsar to attend her duties which create hardship. In her statement she has no where stated if she is serving in M.C. Amritsar. It is in the cross-examination of applicant that at present she is residing at Raja Sansi in her own house. She further stated that she is residing with her brother at Raja Sansi for the last 10/12 years. It is further in her statement that she is having cordial relations with her brother with whom she is residing. It is again in her

cross-examination that the said property is also in her name where she is residing at present. So from the above statement of applicant, it stands proved that she is residing in her own house with her brother with whom she is having very cordial relations. At the time of arguments it was admitted by the learned counsel for the applicant that the applicant is divorcee and issueless. So keeping in view this fact is not at all probable that applicant being lady would shift to the premises in dispute and reside there all alone. Admittedly she is having very cordial relations with her brother and further house wherein she is residing with her brother is also owned by her. So this fact makes it all the more improbable that the applicant bonafide wants to reside in the demised premises. Raja Sansi is not far off place from Amritsar and the applicant can easily attend her duties at Amritsar. In the circumstances stated above I have no hesitation in holding that the applicant has failed to prove that she bonafide requires the premises in dispute for her own residence. Consequently, this issue is accordingly decided against the applicant and in favour of the respondents."

The finding of the Rent Controller was affirmed by the Appellate Authority with the following observations:

" I have heard the learned counsel for the parties, have considered their contentions and have gone through the evidence led by the parties before the learned Rent Controller on the ground of the alleged bonafide requirement of the

appellant/landlady. After giving a careful thought to what has been argued by the learned counsel for the parties, I have reached at the conclusion that the leaned Controller was justified in arriving at a conclusion that before it, the applicant/ appellant/ landlady could not prove her alleged personal requirement and her alleged personal requirement was not bonafide. It is in evidence and it has been admitted by the appellant/ applicant before the Rent Controller appearing as AW5, that she is at present residing at Rajasansi. That house is owned by the appellant/ landlady. She has strained relations with her husband and is as such she was living separately from her husband at Rajasansi where her brothers are also living. The applicant opted to reside in her own house at Rajasansi as after her relations became strained with her husband, she needed security which was provided to her by her brothers who are also living in her house at Rajasansi. As far as her contention that she being employed at Amritsar has to come daily to Amritsar from Rajasansi, but that is nothing new nor inconvenient for her as Rajasansi is almost on outskirts of Amritsar and she has been commuting daily from Rajasansi to Amritsar for the last more than 12/15 years. Transport between the two places is quite frequent. Under these circumstances her contention that she wants to shift in her this particular house i.e. demised premises, seems but an excuse and her alleged personal requirement as aforesaid, is not bonafide."

Learned counsel for the petitioner has contended that it has come on the record that the demised premises had been let out to the respondents-tenants about three decades prior to the filing of present petition. The petition was filed in the year 1993. Today the tenants therefore are in possession of the premises for about four and a half decades. He contends that the age of landlady is now at an advanced age of her life. As on the date her statement recorded in the year 1996 her age was 44 years. Therefore today she would be 54 years of age. He contends that at this age it is very difficult for the landlady to commute about 18 K.M. twice everyday in a busy town like Amritsar. He contends that it takes a long time on account of heavy traffic. He further states that it is settled law that landlord is the best juge of his own residential requirement. He has complete freedom in the matter. The Court cannot dictate as to how or where the landlord should live. The Court is rather solicitous about the age of the landlord. He has referred to the following observations made by the Hon'ble Supreme Court in **Prativa Devi (Smt.) v. T.V. Krishnan 1996 HRR 547**:-

> " The reasons given by the High Court that the appellant is an old lady aged about 70 years and has no one to look after her and therefore she should continue to live with Shri Chatterjee, was hardly a ground sufficient for interference. The landlord is the best judge of his residential requirement. He has a complete freedom in the matter. It is no concern of the courts to dictate to the landlord how, and in what manner, he should live or to prescribe for him a residential standard of their own. The High

Court is rather solicitous about the age of the appellant and thinks that because of her age she needs to be looked after. Now, that is a look out of the appellant and not of the High Court. We fail to appreciate the High Court giving such a gratuitous advice which was uncalled for. There is no law which deprives the landlord of the beneficial enjoyment of his property. We accordingly reverse the finding reached by the High Court and restore that of the Rent Controller that the appellant had established her bonafide requirement of the demised premises for her personal use and occupation, which finding was based on a proper appreciation of the evidence in the light of the surrounding circumstances."

The same view has been re-iterated by the Hon'ble Supreme Court in a number of judgments including **Meenal Exnath Kshirsagar (Mrs.) v. Traders and Agencies and Another 1996 HRR 523 t**he relevant observations of which are as hereunder:-

"... As pointed out by this Court it is for the landlord to decide how and in what manner he should live and that he is the best judge of his residential requirement. If the landlord desires to beneficially enjoy his own property when the other property occupied by him as a tenant or on any other basis is either insecure or inconvenient it is not for the courts to dictate to him to continue to occupy such premises. Though Exnath continues to be the tenant of the "Olympus" flat, as a matter of fact, it is being occupied exclusively by Sridhar and his family since

October, 1972."

He further submits that a reading of the conclusion recorded by the Rent Controller reproduced herein above would show that the Rent Controller has noted that the landlady in her evidence has nowhere stated that she is serving in Municipal Corporation Amritsar. He has referred to the examination-in-chief of the landlady. After going through it I find that the landlady has clearly stated that she has to come daily from Raja Sansi to Amritsar to attend her duty which creates hardship. He thus submits that the Rent Controller has totally misread the statement of the landlady and recorded a finding which is totally perverse. He further states that a further reading of the observations of the Rent Controller would show that the Rent Controller has opined that the landlady can come comfortably from Raja Sansi and therefore she does not require the house at Amritsar. He submits that the said observations are totally against the law laid down by the Hon'ble Supreme Court as reproduced above where it has been categorically held that it is the landlord who is the best judge of his requirements and the Court cannot dictate as to where the landlord can more comfortably reside. He therefore submits that even these findings by the Rent Controller are totally perverse. It is the aforesaid findings which have been affirmed by the Appellate Court. He therefore submits that the findings should be reversed and the plea of bonafide personal necessity pleaded by the landlady be accepted. As against this learned counsel for the respondent states that both the courts below have recorded firm findings of fact after assessing the evidence placed before them. This Court would not disturb these findings of fact in a revision petition. In support of this

contention he has referred to a judgment of this Court in **Darshan Kumar v. Mahesh Kumar 2003(3) CCC 671**. He has referred to the following observation made by this Court in the aforesaid judgment:-

> " I have thoughtfully considered the rival contentions raised by the leaned counsel for the parties and am of the view that this petition is devoid of merits and is thus liable to be dismissed. The revisional jurisdiction of this Court are limited as is laid down in numerous of the Supreme Court. It is only in cases where findings are perverse in the sense that no reasonable person on the basis of available evidence would come to the conclusion recorded by the Courts below which would result in exercise of revisional jurisdiction under sub-Section (5) of Section 15 of the Act. If the findings are without any evidence, perfunctory and wholly unreasonable then also this Court enjoys jurisdiction to interfere in such type of findings. However, this Court cannot, on re-appreciation of evidence, record a conclusion different than the one recorded by the courts below merely because it has felt that way."

On merits he submits that the findings are valid and reasonable. It has been found that the landlady has her own house at Raja Sansi where she is residing. This is on account of the fact that she has matrimonial dispute with her husband and is living there under the security of her brothers who are also residing at Raja Sansi.

After hearing counsel for the parties I find merit in the contention raised by learned counsel for the petitioner-landlady. It has

clearly come in the statement of the landlady that she is serving in Amritsar. It is therefore that she desires to reside at Amritsar. The demised premises is the only residential house that she has at Amritsar. Her need to reside at Amritsar for her bonafide personal necessity is thus to be respected in terms of the law laid down by the Hon'ble Supreme Court in **Prativa Devi (Smt.) v. T.V. Krishnan (supra) and Meenal Exnath Kshirsagar (Mrs.) v. Traders and Agencies and another (supra).** The Court cannot suggest that she should reside at one place or the other. In the face of the fact that the landlady has to commute for about 18 K.M. everyday morning and evening even up to date at the age of 54 years I am of the opinion that her plea of bonafide personal necessity is well founded and deserves to be accepted. In my opinion the findings recorded by the learned Rent Controller that she has not stated in her deposition that she is serving at Amritsar is totally perverse as such a statement has been clearly made by her. The Rent Controller further opines that she can comfortably stay at Raja Sansi. Even this opinion in my view is against the law laid down by the Hon'ble Supreme Court. Thus the findings recorded by the Rent Controller as affirmed by the Appellate Authority are in my opinion totally perverse and I have thus no hesitation in reversing the same.

For the reasons aforementioned, the present petition is allowed. The petition filed by the landlady for eviction of the respondents-tenants is allowed. The tenants are directed to hand over vacant possession of the house to the landlady on or before February 28, 2007.

November 22, 2006 **(P.S. PATWALIA)**
dinesh **JUDGE**